

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/791,270 Confirmation No. : 8940  
First Named Inventor : Masaaki NOMURA  
Filed : March 3, 2004  
TC/A.U. : 1618  
Examiner : Hasan Sayed AHMED

Docket No. : 100598.53322US  
Customer No. : 23911

Title : Pharmaceutical Hard Capsule Containing Inorganic Substance

**Response to Notice of Non-Compliant Amendment**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed November 24, 2008, Applicants elect species II (b) – that is, the penem antibiotic species of Claim 17 - for further prosecution in this matter. Claims 1-14 and 17-23 are believed to generic to species II (b). Applicants also affirm their previous election of species I (e) – that is, the penem antibiotic in the form recited in Claim 21 (see the reply filed April 1, 2007). Claims 1-7, 11, 12, and 16-21 are believed generic to species I (e). An early action on the merits of all the claims is earnestly solicited.

If necessary to effect a timely response, please consider this paper a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 100598.53322US).

Respectfully submitted,

**December 19, 2008**

CROWELL & MORING LLP  
Intellectual Property Group  
P.O. Box 14300  
Washington, DC 20044-4300  
Telephone No.: (202) 624-2500  
Facsimile No.: (202) 628-8844

/Christopher T. McWhinney/  
Christopher T. McWhinney  
Registration No. 42,875

Jeffrey D. Sanok  
Registration No. 32,169